

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2144 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GANDUBHAI SAVJIBHAI

Versus

STATE OF GUJARAT

Appearance:

MR YATIN SONI for Petitioners

MRS PAREKH AGP for Respondent-State

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 04/04/97

ORAL JUDGEMENT

Heard Mr. Yatin Soni, learned advocate for the petitioners and Mrs. Parekh, learned AGP for the Respondent-State.

The impugned order dated 16th December, 1996

{Annexure "E"} passed by Respondent No. 2 rejecting petitioners' application for exemption under Section 29 (1) of the Urban Land {Ceiling & Regulation} Act, 1976 [for short - "The Act"] in respect of land bearing Survey No. 52/1, admeasuring about 4 Acre, 38 Gunthas, has been challenged in this petition under Article 226 of the Constitution of India. Petitioners had applied for exemption under Section 20 of the Act vide Application at Annexure "D" dated 11-12-1988 contending that the land in question is being continuously used for agricultural activities and cultivation. The said application has been rejected on the following grounds :-

- (a) That the application for exemption is not in consonance with the provisions of Section 20 of the Act as the land is situated in a zone other than agricultural zone, and therefore, is required to be declared as "excess holding";
- (b) That the exemption would not be in 'public interest';
- (c) The land in question is not used for cultivation and agricultural purposes.

Identical questions have been considered by this Court in Special Civil Application No. 1745 of 1997 decided on 4th April, 1997. For the reasons stated therein, this petition also requires acceptance.

Apart from this fact, in this case also, the petitioners have produced 7/12 Abstract at page-11 which shows that the petitioners were doing cultivation of paddy and groundnut since 1975-76 till 1995-96; except for two years viz., 1992-93 & 1993-94. Merely because the land in question is not cultivated for two years is not a ground for rejection, since as per law also, the land should only be in cultivation and use for agricultural purposes on the appointed date and prior thereto. While considering the question of exemption under Section 20, continuous cultivation of land is not the only criteria. In an unreported judgement in Special Civil Application No. 1364 of 1987 {Coram : A.N Divecha, J.} delivered on 16-12-1994, this Court has held that the land in question might have remained uncultivated for thousand and one reasons for some years prior thereto. What is however required to be seen is

whether or not during three preceding years from the date of the application for exemption the lands in question were cultivated. In this case also, 7/12 Abstract produced at page 41 clearly shows that the land was cultivated by the petitioners since 1975-76 onwards and is still in cultivation; except for two intervening years viz., 1992-93 & 1993-94. In view of the judgment referred to above, delivered in Special Civil Application No. 1364 of 1987, non-cultivation of land for two years subsequent to the date of application would be insignificant and the authority should not have been influenced while deciding exemption application. The documents on record also show that the land has been in cultivation and in use for agricultural purposes even prior to the enforcement of the Act, whereas the master plan has come into force on 1st June, 1988, therefore, according to the ratio laid down by the Supreme Court in the case reported in 1983 SC p-2465 also the ground of rejection cannot be sustained since the Act will have no application in relation to the land in question.

In the result, this application is allowed. The impugned order dated 16th December, 1996 is hereby quashed and set-aside, and the matter is remanded to respondent No. 2 for fresh consideration, on merits, in the light of observations made by this Court, within a period of two months from the date of receipt of this judgement. Rule is made absolute to that extent with no order as to costs.

Prakash*